



business address for Solae set forth therein, and therefore denies same and leaves Plaintiff to its proof thereof.

6. Amerifit admits the allegations contained in paragraph six of the Complaint.

7. Amerifit admits the allegations contained in paragraph seven of the Complaint.

8. Amerifit does not have sufficient information to either admit or deny the allegations, contained in paragraph eight and therefore denies same and leaves Plaintiff to its proof thereof.

9. Amerifit does not have sufficient information to either admit or deny the allegations, contained in paragraph nine and therefore denies same and leaves Plaintiff to its proof thereof.

10. Amerifit does not have sufficient information to either admit or deny the allegations, contained in paragraph ten and therefore denies same and leaves Plaintiff to its proof thereof.

11. Amerifit does not have sufficient information to either admit or deny the allegations, contained in paragraph eleven and therefore denies same and leaves Plaintiff to its proof thereof.

12. Amerifit states that the document speaks for itself.

13. Amerifit states that the document speaks for itself.

14. Amerifit denies the allegations contained in paragraph fourteen of the Complaint.

15. Amerifit denies the allegations contained in paragraph fifteen of the Complaint.

16. To the extent paragraph sixteen of the Complaint alleges that ADM's Novasoy contains more than trace amounts of each of the soy isoflavones daidzein, genistein, and glycitein, their glucosides, and acetyl and malonyl esters, Amerifit denies the allegations contained in paragraph sixteen of the Complaint.

17. Amerifit admits the allegations contained in paragraph seventeen of the Complaint.

18. Amerifit denies the allegations contained in paragraph eighteen of the Complaint.

19. Amerifit denies the allegations contained in paragraph nineteen of the Complaint.

20. To the extent paragraph twenty of the Complaint alleges that Amerifit's Estroven contains more than trace amounts of each of the soy isoflavones daidzein, genistein, and glycitein, their glucosides, and acetyl and malonyol esters, Amerifit denies the allegations contained in paragraph twenty of the Complaint.

21. Amerifit admits the allegations contained in paragraph twenty of the Complaint.

22. Amerifit repeats the answers set forth above in paragraphs 1-21.

23. Amerifit denies the allegations contained in paragraph twenty-three of the Complaint.

24. Amerifit denies the allegations contained in paragraph twenty-four of the Complaint.

25. Amerifit denies the allegations contained in paragraph twenty-five of the Complaint.

26. Amerifit denies the allegations contained in paragraph twenty-six of the Complaint.

27. Amerifit denies the allegations contained in paragraph twenty-seven of the Complaint.

28. Amerifit denies the allegations contained in paragraph twenty-eight of the Complaint.

29. Amerifit denies the allegations contained in paragraph twenty-nine of the Complaint.

WHEREFORE, Amerifit prays that this Court enter judgment in its favor against the Plaintiff and deny in the entirety the relief requested by Solae.

## **Affirmative Defenses**

### **Invalidity**

30. Each claim of the '291 patent is invalid under 35 U.S.C. § 102 as lacking novelty, is invalid under 35 U.S.C. § 103 because the differences between the subject matter claimed and the prior art are such that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains; and/or is invalid for failure to comply with the requirements of 35 U.S.C. § 112.

31. Each claim of the '380 patent is invalid under 35 U.S.C. § 102 as lacking novelty, is invalid under 35 U.S.C. § 103 because the differences between the subject matter claimed and the prior art are such that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains; and/or is invalid for failure to comply with the requirements of 35 U.S.C. § 112.

### **Non-Infringement**

32. Amerifit does not now infringe, nor has it ever infringed, the '291 patent.

33. Amerifit does not now infringe, nor has it ever infringed, the '380 patent.

### **Counter-Claim**

### **Declaratory Judgment**

34. On information and belief, Plaintiff and counterclaim Defendant, Solae, L.L.C., is a Delaware limited liability corporation, having a principal place of business in St. Louis, Missouri.

35. Defendant and counterclaim Plaintiff, Amerifit Nutrition, Inc., is a corporation organized under the laws of the state of Delaware with its principal place of business at 166 Highland Park Drive, Bloomfield, Connecticut 06002.

36. This is an action for declaratory judgment of invalidity, unenforceability and non-infringement of U.S. Patent No. 5,990,291 ("the '291 patent") and U.S. Patent No. 6,562,380 ("the '380 patent") under the patent laws of the United States, Title 35 United States Code.

37. Exclusive jurisdiction over these counterclaims is conferred upon this Court pursuant to 28 U.S.C. § 1338(a). The relief of declaratory judgment is proper under 28 U.S.C. § 2201.

38. A true and actual controversy exists regarding the validity, enforceability, and non-infringement of the claims of the '291 patent and the '380 patent asserted by Solae against Amerifit.

39. On June 4, 2003, Plaintiff filed a Complaint (Civil Action Number 03 CV 00732 HEA) against Amerifit alleging, *inter alia*, that certain products made, used and/or sold by Amerifit infringe the '291 patent and/or the '380 patent.

40. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c).

#### **COUNT I - Invalidity of the '291 patent**

41. Amerifit realleges the allegations set forth above in counterclaim paragraphs 34-40.

42. Each claim of the '291 patent is invalid under 35 U.S.C. § 102 as lacking novelty; is invalid under 35 U.S.C. § 103 because the differences between the subject matter claimed and the prior art are such that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains; and/or is invalid for failure to comply with the requirements of 35 U.S.C. § 112.

#### **COUNT II - Invalidity of the '380 patent**

43. Amerifit realleges the allegations set forth above in counterclaim paragraphs 34-40 and 42.

44. Each claim of the '380 patent is invalid under 35 U.S.C. § 102 as lacking novelty; is invalid under 35 U.S.C. § 103 because the differences between the subject matter claimed and the prior art are such that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains; and/or is invalid for failure to comply with the requirements of 35 U.S.C. § 112.

**COUNT III - Non-Infringement of the '291 patent**

45. Amerifit realleges the allegations set forth above in counterclaim paragraphs 34-40, 42 and 44.

46. Amerifit does not now infringe, nor has it ever infringed, the '291 patent.

**COUNT IV - Non-Infringement of the '380 patent**

47. Amerifit realleges the allegations set forth above in counterclaim paragraphs 34-40, 42, 44 and 46.

48. Amerifit does not now infringe, nor has it ever infringed, the '380 patent.

**Prayer for Relief**

WHEREFORE, counterclaim Plaintiff Amerifit requests that this Court:

A. Enter judgment declaring that U.S. Patent No. 5,990,291 is invalid and unenforceable.

B. Enter judgment declaring that U.S. Patent No. 6,562,380 is invalid and unenforceable.

C. Enter judgment declaring that Amerifit does not infringe, nor has it ever infringed, U.S. Patent No. 5,990,291.

D. Enter judgment declaring that Amerifit does not infringe, nor has it ever infringed, U.S. Patent No. 6,562,380.

E. Enter judgment pursuant to 35 U.S.C. § 285 awarding Amerifit all of its reasonable attorney fees, costs and expenses incurred in defending this action because this is an exceptional case.

F. Award such other and further relief as may be just and proper under the circumstances.

**Demand for Jury Trial**

Amerifit demands a trial by jury of all issues so triable as a matter of right.

Respectfully submitted,

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*Of Counsel for Defendant*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy hereof was sent via the Court's Electronic Case Filing System on this 1<sup>st</sup> day of April, 2004 to:

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